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No. 07-700

FILED
MAR 25 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

RICOH ELECTRONICS, INC.,

Petitioner,

v.

JAMES HALUCK and MICHAEL LITTON,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of California, Fourth Appellate District

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DANIEL J. CALLAHAN
BRIAN J. MCCORMACK
JILL A. THOMAS*
**Counsel of Record*
CALLAHAN & BLAINE, APLC
3 Hutton Centre Drive, Suite 900
Santa Ana, California 92707
(714) 241-4444

Counsel for Petitioner, Ricoh Electronics, Inc.

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

I. TRANSFER OF SPECIALIZED KNOWLEDGE FROM RICOH-JAPAN TO REI TO ENSURE UNIFORMITY OF THE MANUFACTURING PROCESS CAN ONLY BE ACCOMPLISHED BY ROTATION OF RICOH-JAPAN'S R&D EXPERTS TO REI 1

II. THE DECISION OF THE LOWER COURT WAS NOT MADE ON INDEPENDENT AND ADEQUATE STATE GROUNDS 6

III. THE CASE IS RIPE FOR REVIEW AS THE DECISION OF THE LOWER COURT IS FINAL ON THE CROSS-APPEAL CONCERNING FEDERAL TREATY RIGHTS 7

IV. THE DENIAL OF PETITIONER'S EARLIER PETITION IS NOT A BASIS TO DENY THIS PETITION AS THE ISSUE HAS BEEN FINALLY RESOLVED BY THE LOWER COURT 8

V. THERE IS A CONFLICT OF AUTHORITY BETWEEN THE DECISIONS OF THE LOWER COURT AND THE FEDERAL COURTS WHICH MUST BE RESOLVED 9

TABLE OF CONTENTS – Continued

Page

VI. THAT PETITIONER IS A WHOLLY OWNED SUBSIDIARY OF A WHOLLY OWNED SUBSIDIARY OF RICOH-JAPAN, SHOULD NOT MINIMIZE FEDERAL TREATY RIGHTS 11

VII. FEDERAL TREATY RIGHTS ARE A MATTER OF NATIONAL IMPORTANCE THAT MUST BE CAREFULLY GUARDED TO PROTECT U.S. ECONOMIC INTERESTS 12

VIII. RESPONDENTS' CLAIMS WILL NOT BE RETRIED IF PETITIONER PREVAILS ON THE TREATY DEFENSE 14

CONCLUSION 15

TABLE OF AUTHORITIES

Page

CASES

Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991) 6

Enterprise Irrigation Dist. v. Farmers Mut. Canal Co., 243 U.S. 157 (1917) 7

Fortino v. Quasar Co., 950 F.2d 389 (7th Cir. 1991) 7

Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176 (1982) 10

CALIFORNIA CONSTITUTION

Article XX 6

TREATISES

4 U.S.T. 2063, 2370, T.I.A.S. No. 2863, Article VIII(1) ..... *passim*

Petitioner, Ricoh Electronics, Inc. (hereafter "REI" or "Petitioner") submits the following Reply Brief in response to the Brief in Opposition to Petition for Writ of Certiorari filed by Respondents, James Haluck ("Haluck") and Michael Litton ("Litton," collectively "Respondents").

I. TRANSFER OF SPECIALIZED KNOWLEDGE FROM RICOH-JAPAN TO REI TO ENSURE UNIFORMITY OF THE MANUFACTURING PROCESS CAN ONLY BE ACCOMPLISHED BY ROTATION OF RICOH-JAPAN'S R&D EXPERTS TO REI

Respondents submit extraneous facts, unnecessary to determination of the questions presented by this Petition. These questions do not arise from any disputed determination of fact by the lower court but by determination that, as a matter of law, a subsidiary, REI, may not invoke the Article VIII(1) defense[1] of the U.S.-Japan Friendship, Commerce and Navigation Treaty ("FCN Treaty") of its foreign parent, Ricoh-Japan.

Nevertheless, it is essential to understand the factual background which serves as the basis for

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[1] Article VIII(1) provides that "companies of either Party [to the treaty] shall be permitted to engage, within the territories of the other Party, accountants and other technical experts, executive personnel, attorneys, agents and other specialists *of their choice*." (Apr. 2, 1953, 4 U.S.T. 2063, 2370, T.I.A.S. No. 2863; emphasis added.)

assertion of the treaty defense. All products that are manufactured at REI are researched, developed, tested, manufactured, and perfected at Ricoh-Japan. To ensure and maintain uniform and impeccable quality, REI must obtain knowledge of the product, testing, quality control and manufacturing process from Ricoh-Japan. Haluck and Litton never worked at Ricoh-Japan and had no personal knowledge of the research and development department at Ricoh-Japan ("R&D") or of the most effective way to transfer the knowledge from R&D to Ricoh's manufacturing facilities throughout the world. Without such "knowledge transfer" from the people in R&D, it would be impossible to ensure a correct and uniform *manufacturing process* and thus, no quality control of the ultimate end product. The only effective way that Ricoh-Japan could transfer such knowledge was to rotate key highly-skilled executives and technical personnel to Ricoh-Japan's manufacturing facilities throughout the world, including the United States and REI. The rotation of the Japanese nationals for this purpose was mandated by Ricoh-Japan in order to protect its investment in the United States, the very same interests sought to be advanced by the FCN Treaties.

REI represents a small part of Ricoh-Japan's global operations, which consists of 376 subsidiaries and 28 affiliates that develop, produce, market, sell, and recycle office equipment, including copiers and printers, information equipment, optical devices. It is highly presumptive and speculative for Haluck and

Litton to claim to understand the needs of Ricoh-Japan or to claim that any employment decisions were not made by Ricoh-Japan to maintain quality control of the manufacturing process and thus the end product manufactured at REI.

Specifically, all of the technical specifications for production and manufacture are developed at the R&D facilities at Ricoh-Japan and perfected by the executive and technical employees who work there. It is these individuals who must transfer this knowledge and expertise to manufacturing facilities throughout the world. In addition, because manufacture of these products occurs at different plants throughout the world, it is essential that the there be uniformity of product so that a customer will receive the identical, quality product from any of the Ricoh facilities throughout the world. But this can only be accomplished if the manufacturing processes are standardized globally. The only way this can be done is by rotating throughout the different Ricoh facilities, as required, of those highly skilled experts from R&D at Ricoh-Japan who are familiar with the new technological developments and manufacturing processes implemented in Japan. Declaration of Yoshihiro Nomura, ¶¶4-13, filed May 28, 2004, as Exhibit 2 to Joint Defendants' Notice of Lodgement of Evidence Submitted in Support of Motions for Summary Judgment ("Nomura Decl."); Separate Statement in Support of REI's Motion for Summary Judgment, Fact Nos. 1-13.

Ricoh-Japan replicates its technological and manufacturing innovations by rotating executive and technical employees, who have been instrumental in developing these new technologies at R&D, Ricoh-Japan, to REI. Nomura Decl., ¶21; Fact No. 21. To be selected for rotation to REI, these Japanese expatriates must have an advanced level of expertise and proprietary knowledge of Ricoh-Japan's process, procedures, techniques and business and internal operations. Nomura Decl., ¶7; Fact No. 22. These occupational qualifications are absolutely necessary to the normal operation of REI's business, as it is essential that products made in the United States conform to the same production, quality and performance standards as those produced in Japan. Nomura Decl., ¶7; Fact No. 23. All production, engineering, and quality control procedures at REI must likewise be consistent with that in place at the parent company and other production facilities. Because all of the technical specifications for production and manufacture are developed at Ricoh-Japan, and perfected by the executive and technical employees who work there, it is these individuals who must assist in the implementation of the manufacturing process and quality assurance functions at REI, as local staff simply does not have the expertise to do so. Nomura Decl., ¶7; Fact Nos. 24, 25.

To facilitate the implementation of such uniform manufacturing processes, changes were also made in the organizational structure of REI, including the creation of new Quality Control Divisions, managed

by the newly placed Japanese expatriates from Ricoh-Japan. Declaration of Rick Walsh, ¶¶2-8, dated May 27, 2004 and filed in support of REI's Motion for Summary Adjudication ("Walsh Decl."). These expatriates were, and remained, employees of Ricoh-Japan and reported directly to Ricoh-Japan.

The general qualifications of Haluck and Litton are irrelevant to the right of Ricoh-Japan to rotate its own highly qualified technical employees to REI to maintain the quality control of its manufacturing process and thus, its end product manufactured in the United States. Ricoh-Japan had a significant economic interest to see that its local manufacturing process and end product of its own R&D complied with the standards set by Ricoh-Japan and was not required to rely on local employees of its subsidiary who have no particular expertise in that regard. In fact, the FCN Treaty was implemented to protect just such an interest, which is reciprocal to American companies operating abroad.

That REI was originally a direct subsidiary of Ricoh-Japan and later became an indirect subsidiary as a result of a global restructuring should not affect the propriety of granting review. REI was initially formed as a 100% wholly owned subsidiary of Ricoh-Japan and is now a 100% wholly owned subsidiary of Ricoh-New Jersey, which is a 100% owned subsidiary of Ricoh-Japan. Thus, REI remains, in effect, 100% owned by Ricoh-Japan, albeit indirectly. This corporate restructure was done to accommodate certain business and reporting requirements mandated by

the global expansion of Ricoh-Japan. Regardless of this corporate re-structure, REI has always reported, and continues to report directly to Ricoh-Japan. These direct reporting requirements and the rotation of the Ricoh-Japan expatriates at REI have effectively served to promote Ricoh-Japan's interest in protecting its investments in the United States, the very fundamental purpose of the U.S.-Japan FCN Treaty.

II. THE DECISION OF THE LOWER COURT WAS NOT MADE ON INDEPENDENT AND ADEQUATE STATE GROUNDS

The state law grounds suggested by Respondents, *California Constitution,* Article XX and the cases cited at page 14 of their Brief, were neither raised by Respondents in the lower court nor mentioned in the published decision of the lower court. App. 23-25. This case involves no state law issues involved in those cases cited by Respondents.

In addition, "third party standing" and "piercing the corporate veil" did not provide independent state grounds supporting the judgment. "Piercing the corporate veil" was neither asserted by any party nor as a theory supporting the judgment. App. 24.

Third party standing cases cited by the lower court do *not* involve federal treaty rights. *Edmonson v. Leesville Concrete Co.,* 500 U.S. 614, 629 (1991). Reference to such analogous bodies of law simply provide additional legal justification for invocation of a parent's treaty rights. But third party standing is

not necessarily a basis for rejection of the treaty defense. Federal appellate decisions have not required satisfaction of a third party standing test to invoke federal treaty rights. *Fortino v. Quasar Co.*, 389, 393 (7th Cir. 1991).

Assuming *arguendo* that third party standing could be viewed as an independent state ground, it is well established that where the non-federal ground is so interwoven with the other as not to be an independent matter, or is not of sufficient breadth to sustain the judgment without any decision of the other, the Supreme Court does have jurisdiction. *Enterprise Irrigation Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157, 164 (1917). This is also true where the non-federal ground is so unfounded that it may be regarded as essentially arbitrary or a mere device to prevent a review of the decision upon the federal question. *Id.* At most, the third party standing theory is interwoven with the federal treaty issue and does not provide a wholly independent and adequate state ground to support the judgment. It cannot be seriously stated that the decision of the lower court was based on anything other than a rejection of federal treaty rights.

III. THE CASE IS RIPE FOR REVIEW AS THE DECISION OF THE LOWER COURT IS FINAL ON THE CROSS-APPEAL CONCERNING FEDERAL TREATY RIGHTS

There will be no retrial concerning REI's assertion of the federal treaty defense because the lower

court ruled that REI may not assert the treaty defense as a matter of law. App. 30 and 37. This issue has been permanently foreclosed and will never be relitigated in a new trial. No findings of fact will ever be made on this issue. The case is therefore ripe for review.

The published decision of the lower court will not be reversed on a retrial, but only if this Honorable Court grants review to resolve the federal questions raised by the Petition.

IV. THE DENIAL OF PETITIONER'S EARLIER PETITION IS NOT A BASIS TO DENY THIS PETITION AS THE ISSUE HAS BEEN FINALLY RESOLVED BY THE LOWER COURT

Respondents erroneously argue that the Petition should be denied because this Court denied Petitioner's prior Petition, filed on February 24, 2005, regarding the same issues. This argument is specious as the prior Petition was brought only after the trial court denied Petitioner's motion for summary adjudication on the federal treaty issue but before the case had proceeded to trial. Final judgment had not yet been entered and the state appellate courts had not yet reviewed the federal treaty issue and rendered the final published precedent setting opinion on the issue.

The case status is entirely different now. The case proceeded to a jury trial, judgment was entered,

an appeal and cross-appeal on the federal treaty issue was made, a *final, published opinion* against Petitioner on the cross-appeal was entered, and the Supreme Court of the State of California denied Petitioner's Petition for Review. App. 49. As a result, this issue has been fully and finally adjudicated and no findings of fact will be made in a retrial on the federal treaty issues as those issues have been permanently barred as a matter of law. The case is therefore in a final position to be reviewed by this Court, which necessarily involves a careful review of the merits of the important federal questions presented, and not a duplicate blank stamp of denial, as Respondents suggest.

V. THERE IS A CONFLICT OF AUTHORITY BETWEEN THE DECISION OF THE LOWER COURT AND THE FEDERAL COURTS WHICH MUST BE RESOLVED

Respondents disingenuously argue that there is no basis to accept review because there is no conflict between the decision of the lower court and this Court's decision in *Sumitomo*, and there is no conflict in the federal court decisions. Respondents' Brief, p. 15-16. What Respondents ignore, however, is the clear and unequivocal conflict between the decision of the lower court and the many federal district and appellate court decisions rendered since *Sumitomo* addressing the issue left open by this Court in footnote 19 for another day. ["We also express no view as to whether Sumitomo may assert any Article VIII(1)

rights of its parent." *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 189 n.19 (1982).] *That day has arrived.*

The published state court decision is repugnant to federal judicial interpretation of federal treaty rights and to the Supremacy Clause of our federal Constitution. The decision will be cited in all jurisdictions to exclude the FCN Treaties' long-standing protections from those for whom it was intended. If the courts are allowed to continue to chip away at federal treaty rights, U.S. subsidiaries of foreign companies will face liability for actions they had no control over, actions mandated by the parent to protect their investments on U.S. soil. Such a result would diminish the intentions of the drafters of the Friendship Treaties and subject our own U.S. companies operating abroad to hostile and adverse repercussions. To allow state courts to abrogate the purpose and effect of the FCN Treaties will also deter foreign corporations from choosing the United States as a center for their manufacturing or service operations in favor of other nations that are not hostile to the parent corporation's right to control its own operations. Review should therefore be granted to provide uniformity of decision and settle this issue of widespread national and international importance and preserve and protect foreign investment in our country.

VI. THAT PETITIONER IS A WHOLLY OWNED SUBSIDIARY OF A WHOLLY OWNED SUBSIDIARY OF RICOH-JAPAN, SHOULD NOT MINIMIZE FEDERAL TREATY RIGHTS

Respondents argue that the important federal questions raised by this Petition should go unresolved simply because Petitioner is presently a wholly owned American subsidiary of another American subsidiary, which is a wholly owned subsidiary of Ricoh-Japan. Such characterization ignores (1) that REI was originally formed and existed for some time as a direct, 100% owned subsidiary of Ricoh-Japan; (2) that Ricoh-Japan's subsequent global consolidation of certain aspects of its business required the creation of additional subsidiaries with REI becoming a wholly (100%) owned subsidiary of Ricoh-New Jersey; and (3) that Ricoh-New Jersey is also a wholly (100%) owned subsidiary of Ricoh-Japan.

These organizational changes did not alter REI's continued direct relationship with the parent, Ricoh-Japan, including REI's reporting directly to Ricoh-Japan regarding its manufacturing activities. Ricoh-Japan maintains specific divisions which oversee international manufacturing subsidiaries, including REI. This level of strict oversight by the parent is critical to Ricoh-Japan as is also evidenced by the *decisions made by Ricoh-Japan* to place its own highly skilled technical employees with REI to maintain its state of the art manufacturing process. Technology changes frequently and neither REI nor Ricoh-Japan would have flourished here without the

protective umbrella of the FCN Treaty and the right to impose such strict quality control without fear of recrimination.

Respondents provide no legal authority or any rational basis to exclude a 100% "indirectly" wholly owned subsidiary of a foreign parent corporation from invoking the same federal treaty rights as a "directly" wholly owned subsidiary. The federal issues presented herein are far too important to be prematurely quashed by such argument unsupported by any rational basis or legal precedent.

VII. FEDERAL TREATY RIGHTS ARE A MATTER OF NATIONAL IMPORTANCE THAT MUST BE CAREFULLY GUARDED TO PROTECT U.S. ECONOMIC INTERESTS

Respondents admit that the U.S.-Japan FCN Treaty was designed to protect the trade and business interests of one country operating in the other country, including the duties each country owes to the nationals of the other and their right to engage in business in the other country. Opposition Brief, p. 18. Yet Respondents support judicially-imposed restraints on federal treaty rights.

The U.S.-Japan Treaty was signed in 1953. App. 85. Since then, a global economy has developed and international corporations with multi-layered organizational structures have flourished. These developments should be considered when evaluating the

public policies sought to be advanced by the FCN Treaties.

Uniformity of decision of federal treaty rights is critical so that Ricoh-Japan, REI, and all companies have a clear understanding of their rights. It is manifestly unfair to companies such as Petitioner (and its parent) to act in the best interests of their company and their investments here based on their reasonable expectation that federal treaty rights will be honored only to face the prospect of uncertain liability due to the lingering decision of the lower court. Uniformity of decision will ensure fairness and a safe and secure business environment.

The irrational restrictions imposed by the lower court could just as equally be imposed by our fellow treaty nations to American corporations operating abroad. This could have a severe, adverse impact on the health and expansion of global business operations, including the termination of foreign investment in the United States. Petitioner has thus established irreparable and imminent peril to the national economic interest.

Petitioner would also suffer irreparable and imminent peril in having to accept the mandated placement of Japanese nationals by Ricoh-Japan while facing discrimination claims which would otherwise not be allowed against the parent or Ricoh-New Jersey. To allow such a result would not only be unfair and inequitable, but also inflict huge litigation costs and potential monetary judgments against REI,

and potentially requiring the closure of REI's manufacturing operations in the United States.

VIII. RESPONDENTS' CLAIMS WILL NOT BE RETRIED IF PETITIONER PREVAILS ON THE TREATY DEFENSE

Respondents erroneously assert that even if Petitioner may successfully assert the treaty defense, their employment discrimination claims will still be retried. Respondents' Brief, p. 20. If REI prevails on the FCN treaty defense (whether by way of summary judgment or at trial), all of Respondents' other claims would fail because the same alleged discrimination underlies all causes of action.

CONCLUSION

For all of the above reasons, Petitioner, Ricoh Electronics, Inc., respectfully requests that this Honorable Court grant review to settle the important federal questions of widespread and institutional importance presented by the Petition.

Respectfully submitted,

DANIEL J. CALLAHAN
BRIAN J. MCCORMACK
JILL A. THOMAS*
**Counsel of Record*
CALLAHAN & BLAINE, APLC
3 Hutton Centre Drive,
Ninth Floor
Santa Ana, CA 92707
Telephone: (714) 241-4444
Facsimile: (714) 241-4445
Petitioner, Ricoh Electronics, Inc.

Dated: March 25, 2008